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Paper No. 15

Michael R. Barre
c/o Blakely, Sokoloff, Taylor & Zafman, LLP
12400 Wilshire Blvd.
Seventh Floor
Los Angeles, CA 90025-1026

SEP - 3 2004

DIRECTOR OFFICE
TECHNOLOGY CENTER 2100

In re Application of: Hines
Application No. 09/888,061
Attorney Docket No. 042390.P18902
Filed: June 21, 2001
For: EVOLUTION DIAGRAMS FOR
DEBUGGING DISTRIBUTED
APPLICATIONS

)
) **DECISION ON PETITION TO**
) **WITHDRAW HOLDING OF**
) **ABANDONMENT UNDER 37 CFR**
) **§1.181**
)
)

This is a decision on the petition, filed June 29, 2004 requesting the Withdrawal of the Holding of Abandonment of the above-identified application. The petition is being considered under 37 CFR §1.181. This application was held abandoned for failure to respond to the Office action mailed December 4, 2003 (Paper No. 9). A Notice of Abandonment was mailed on June 15, 2004 (Paper No. 13).

Evidence in Support of Petition

In support of the petition, applicant's representative has provided a declaration that the Office action was not received. The petition further contains correspondence (Exh A); e-mail (Exh B) and a docket record copy (Exh C) "for the attorney to whom the application is assigned."

The petition states Intel Corporation "acquired the application as part of a broader agreement on November 7, 2003. The previous power of attorney was revoked and a new power of attorney was provided to the U.S. Patent and Trademark Office on March 5, 2004."

Issues Involving Nonreceipt of Correspondence

The proof necessary set forth in MPEP §711.03(c). The showing required to establish nonreceipt of an Office action includes the following:

- 1) a statement from the practitioner that the Office action was not received,
- 2) a statement from the practitioner that the file jacket and docket records were searched,
- 3) a copy of the docket record at the address of record, and
- 4) a reference to the docket record in the practitioner's statement.

The petition fails to fully comply with the requirements set forth above. The evidence submitted fails because it relates to evidence regarding matters between law firms and the assignee. The statements made appear to clearly indicate the firm of record (Stoel Rives, LLP) received the Office action at the time the Office action was mailed in December 2003. The current practitioner is merely stating his firm never received the Office action from either the

firm of Stoel Rives, LLP or from the assignee, Intel Corporation. Therefore, the evidence submitted to date has not overcome the presumption of receipt.

In fact, there is clear evidence from the practitioner's statements that the Office has properly handled the mailing of communications to the appropriate address. According to the MPEP § 403, "37 CFR 1.33 states that when an attorney has been duly appointed to prosecute an application correspondence will be held with the attorney unless some other correspondence address has been given." Until the assignee's filing dated March 8, 2004 and accepted on April 5, 2004, all correspondence was properly directed to the firm of Stoel Rives, LLP.

The petition is **DISMISSED**. The petitioner may wish to consider filing a petition to revive under 37 CFR § 1.137.

Finally, a review of the file application reveals the applicant failed to comply with the direction given in the earlier petition decision dated May 23, 2002. Specifically, the applicant was advised to file a preliminary amendment adding a sheet of drawings containing figures labeled 41A-D. There is no record of such a filing and the sheet submitted with the petition under 37 CFR § 1.182 does not fulfill that requirement.



Josie A. Ballato
Special Programs Examiner
Technology Center 2100
Computer Architecture, Software, and Information Security